

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

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IN RE: In the Matter of Petition Of Tennessee)
UNE-P Coalition To Open Contested Case)
Proceeding To Declare Unbundled Switching) Docket No. 02-00207
An Unrestricted Unbundled Network Element)

PETITION FOR CLARIFICATION OR RECONSIDERATION

Pursuant to T.C.A. § 4-5-317, the Petitioners¹ request that the Hearing Officer clarify or reconsider the "Order Suspending Procedural Schedule" issued August 1, 2002, in the above-captioned proceeding.

The Order addresses the "Joint Motion to Extend Filing Date" submitted by all parties on July 29, 2002. In that Joint Motion, the parties asked that the filing of rebuttal testimony be postponed until after the Authority Staff had issued data requests to certain carriers, not parties to this docket, and had received answers to those requests. Following the receipt of such information, the parties asked the Hearing Officer to convene a pre-hearing conference to set dates for the filing of rebuttal testimony and a hearing.

In the August 1 Order, the Hearing Officer found that "good cause exists" for this requested extension and that it will "not unreasonably delay the outcome of this docket." Order, at 3. The Order, however, then goes further. Although no party had requested such relief, the Order also states that all procedural dates in this docket "are suspended" pending resolution of

¹ The Petitioners (or UNE-P Coalition) include: Access Integrated Network, Inc.; AT&T Communications of the South Central States; Birch Telecom of the South, Inc.; Ernest Communications, Inc.; MCImetro Access Transmission Services, LLC; MCI WorldCom Communications, Inc.; NewSouth Communications Corp.; and Z-Tel Communications, Inc.

"BellSouth Telecommunications, Inc.'s Motion to Hold Proceeding in Abeyance." That motion by BellSouth is unrelated to the "Joint Motion." The abeyance motion asks that the above-captioned proceeding be suspended indefinitely because of pending proceedings in the courts and before the Federal Communications Commission ("FCC"). The Petitioners have separately responded to that motion.

By delaying this case until after a ruling on the abeyance motion, rather than delaying the case only until the Staff gathers additional information, the Hearing Officer's Order (1) potentially delays this case for much longer than the parties had requested and (2) leaves the Staff with no guidance as to whether to issue the previously ordered data requests.

Because the abeyance motion goes to the ultimate relief requested by the Petitioner, it is likely that, regardless of the Hearing Officer's ruling, the losing side will ask the Authority to review the Hearing Officer's decision. Thus, several weeks or even months could pass before the abeyance motion is finally resolved. No party has asked that this matter be stayed pending a ruling on BellSouth's abeyance motion. Had BellSouth made such a motion, the Petitioners would have opposed it. While the Petitioners agree that extra time is needed to collect information from non-parties prior to filing rebuttal, the Petitioners anticipated that such a delay would not be more than two or three weeks. The Hearing Officer's decision, however, may delay further proceedings for much longer and could render the previous filings in this case stale.

In the meantime, it is not clear whether the Hearing Officer expects the Staff to proceed with the data requests to non-party carriers. If the abeyance motion is denied and the procedural schedule resumes, the parties will still need to await responses to the Staff's data requests before filing rebuttal. On the other hand, if the abeyance motion is ultimately granted by the Authority, the procedural schedule will be stayed. Unless and until that occurs, however, the parties and the Staff should continue getting this case ready for hearing.

Finally, the Hearing Officer should clarify his decision because the Order has been interpreted by BellSouth as indicating that the Hearing Officer apparently finds enough merit in BellSouth's abeyance motion to postpone all further proceedings pending a ruling on the motion. In a similar proceeding before the Louisiana Public Service Commission, BellSouth cited the Hearing Officer's decision in support of the carrier's position that the Louisiana case should be indefinitely suspended. BellSouth wrote,

Until the FCC has adopted rules that comply with the D.C. Circuit's decision (or unless and until that decision is modified on appeal), it makes little sense for this Commission to expend its limited resources trying to resolve the issues presented in this Petition based upon an unbundling standard that has been invalidated or a new standard that has yet to be adopted. A similar proceeding is also pending before the Tennessee Regulatory Authority (Docket No. 02-00207). The Tennessee Pre-hearing Officer has suspended the hearing schedule in that proceeding in order to address BellSouth's Motion to Hold Proceeding in Abeyance, pending the outcome of the federal litigation regarding the appropriate unbundling standard.

"Notice of Intervention and Protest" in Docket No. U-26648 at p. 3 (emphasis added).²

Petitioners do not believe that the Hearing Officer's August 1 Order was intended to indicate any position, one way or the other, on BellSouth's abeyance motion. Nevertheless, the fact that the Order suspended the case for, potentially, a substantial period of time, well beyond the time agreed to by the parties, could be interpreted as implicit support for postponing this matter indefinitely as BellSouth has requested in the abeyance motion. Petitioners respectfully suggest that this was not the Hearing Officer's intent and that a clarification of the Order is appropriate.

² The Georgia Public Service Commission has already heard a similar case. A final decision is expected within a few weeks.

For these reasons, the Petitioners ask that the Hearing Officer grant the "Joint Motion to Extend Filing Date," as requested by all parties and instruct the Staff to continue with the data requests so that this matter can be made ready for hearing.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via fax or hand delivery and U.S. mail to the following on this the 14th day of August, 2002.

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